IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 24186 of 2007(D)

CMA.20/2007 OF ADDL. DISTRICT COURT,N. PARAVUR,
I.A. 1681/06 IN OS.579/2004 MUNSIFF COURT,ALUVA

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PETITIONER:

DEVASSY, AGED 56 YEARS,
S/O. VARKEY,PARELIL ALIAS KUNDOTHARA,
NAYATHODE KARA, ANGAMALLY VILLAGE.

BY ADV. SRI.PAUL K.VARGHESE.

RESPONDENT:

ELIA AGED 81 YEARS, W/O.MOONJELI VAREED
@CHENNAKADAN,CHAMPANNOOR KARA,
ANGAMALLY VILLAGE, ALUVA.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 24186 OF 2007 D

Dated this the 9th August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order passed by the Additional District Judge, North Paravoor in C.M.A.20/07. The defendant was set ex parte in the case and she moved an I.A.1681/06 for setting aside the same. It was averred in the petition that she was suffering from heart disease and arthritis. She was examined and in the cross-examination it appears that she had stated that her son was looking after the case. She was aged 76 at that time and she had gone to the box to depose about her ill health. The respondent viz., the plaintiff did not mount the box at all to controvert the evidence regarding the ailment. In all cases medical certificate is not necessary. The trial court without understanding or evaluating the implications of passing an ex parte decree by denying an opportunity to a party of being heard, dismissed the application. The appellate court held that an opportunity should be given and for the mistake had awarded a cost of Rs.500/-. Learned counsel for the writ petitioner brought to my notice a decision of this Court reported in **Joseph John v. Joseph** {2001(3) KLT 525}. This Court has only reiterated the principles

referred to in **Plantation Corporation of Kerala Ltd. v. Hussain** {1998(1) KLT 1008}. It is a settled principle that unless there is gross negligence or grave misconduct an opportunity should be given. In **Sreedhara Kurup v. Mickel** (1968 KLT 599) the approach has been made clear by this Court. "It was largely a matter of wise discretion to be exercised by the court bearing in mind the wholesome principle that the right of a party to be heard should be negatived only if there is gross negligence or gross carelessness and that if some steps have been taken and application for restoration has been made with some diligence and some evidence adduced making out a sufficient cause for absence, restoration should be ordered, minor misconduct or laches being corrected by the common curative of costs." In the case before me within the stipulated period of thirty days an application has been filed. The defendant has gone to the box and adduced evidence which shows that there was right earnestness in her part to conduct her case. So the conduct of the defendant in this case would never amount to gross negligence or grave misconduct so as to deprive her of an opportunity of being heard. Therefore, I find no illegality or irregularity in the order passed by the appellate court and dismiss the writ petition. But, at the same time, being a matter of

2004 the court shall try to dispose it of as expeditiously as possible.

M.N.KRISHNAN
Judge

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